

State of New Hampshire

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PERSONNEL APPEALS BOARD

State House Annex
Concord, New Hampshire 03301
Telephone (603) 271-3261

APPEAL OF DANIEL WALSH Docket #91-O-28

Response to Appellant's Request for Reconsideration

October 11, 1991

On September 25, 1991, the Personnel Appeals Board (McNicholas, Bennett and Johnson) reviewed the appellant's April 22, 1991 Motion for Reconsideration of the Board's April 11, 1991 decision in his appeal of an alleged violation of the Rules of the Division of Personnel (PART Per 302).

A similar question had been raised in the Appeal of Pierre Planchet (N.H. Supreme Court Case No. 91-183) in which the appellant alleged a violation of Per 302.02(c), when the Department of Corrections failed to post all vacancies for promotional purposes. In the Planchet appeal, the Board had found, in part, that:

"...the appointing authority may elect to fill a vacancy through transfer, with or without the agreement of the employee to be transferred, provided that the Director of Personnel has certified that employee as meeting the minimum requirements of the position into which the employee will be transferred.. .".

On August 22, 1991, the Court declined to hear the Planchet appeal. Absent any additional guidance from the Court, the Board must apply the same rationale in deciding Mr. Walsh's request for reconsideration.

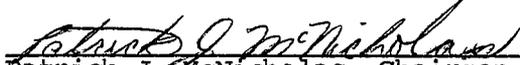
The Board continues to be of the opinion that a Department or Agency may fill a position by lateral transfer, with or without the agreement of the employee to be transferred. The appellant has offered no argument not already raised and considered to persuade the Board that its earlier decision was

APPEAL OF DANIEL WALSH
Response to Motion for Reconsideration

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unreasonable or unlawful. Accordingly, the Board voted unanimously to affirm its earlier order and to deny the instant Motion for Reconsideration.

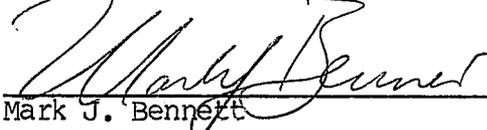
THE PERSONNEL APPEALS BOARD



Patrick J. McNicholas, Chairman



Robert J. Johnson



Mark J. Bennett

cc: Virginia A. Vogel, Director of Personnel
Stephen J. McCormack, SEA Field Representative
Michael Brown, Esq., Department of Corrections
Lisa A. Currier, Human Resource Coordinator, Department of Corrections

State of New Hampshire

WPPID732



PERSONNEL APPEALS BOARD

State House Annex
Concord, New Hampshire 03301
Telephone (603) 271-3261

APPEAL OF DANIEL WALSH Department of Corrections Docket #91-0-28

April 11, 1991

The New Hampshire Personnel Appeals Board (McNicholas, Johnson and Bennett) met Wednesday, April 10, 1991, to consider the appeal of Daniel Walsh, an employee of the New Hampshire Department of Corrections.

Mr. Walsh, through his representative the State Employee's Association, requested that the Board render a decision on his appeal without evidentiary hearing pursuant to PART Per-A 202.04(a)(1), and that the Board issue the following order:

"Whereas, the Department of Corrections has violated the Personnel Rules of the State of New Hampshire, PART Per 302.03(a), PART Per 302.02(c), and PART Per 302.05 (a) .

"That the Department of Corrections vacate the position of Transportation Sergeant immediately and properly post and fill the vacated position in accordance with the Personnel Rules of the State of New Hampshire."

Appellant Walsh argued that the Department of Corrections¹ decided to fill the position of Transportation Sergeant by lateral transfer, and alleged that he had therefore been denied the opportunity to apply for promotion to that position. The Board does not agree. Both the Personnel Appeals Board and the Promotion Appeals Tribunal have ruled on the propriety of filling a vacancy by lateral transfer, and posting for "laterals only". [SEE: Pierre A. Planchet, Response to Appellant's Motion for Reconsideration, P.A.S., April 3, 1991; Appeal of Michael Beadle (Docket #90-P-11), P. A. T. , April 3, 1991]

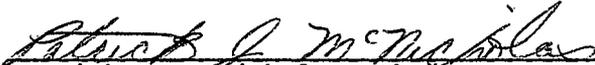
The appellant also argues that the lateral transfer violated Per 302.05(a), that a position may be filled by an appointing authority by the transfer of a departmental employee from any position within the same labor grade to the vacant position upon written notice to the director and approval by him as to minimum qualifications. The appellant has offered no reason for the Board to believe that a person occupying a position of "Sergeant" would not be deemed to meet the minimum qualifications for another position of "Sergeant". Accordingly, the Board sees no reason to believe the Department of Corrections was under any obligation to have the transferred employee re-certified as meeting the minimum requirements.

The appellant also contended that Tom Hogan, the employee allegedly selected to fill the vacant Transportation Sergeant position, had never applied for the vacant position. While that allegation may be true, it has no bearing upon the instant appeal.

"Per 302.05 (b) establishes the standard by which the Board will judge appeals relating to transfers. That section establishes that 'It is the prerogative of management to determine who and when employees are to be transferred'. While the grammatical construction may be awkward, the intent seems clear. The Board construes this language to give broad authority to the appointing authority [in determining when to fill positions by lateral transfer]." (See: Appeal of Conservation Officer David Lovequist, Personnel Appeals Board Order on Motion for Rehearing, May 22, 1989) Per 302.05 of the Rules of the Division of Personnel addresses Transfer Within a Department or Agency.

In consideration of the foregoing, the Board voted unanimously to dismiss Mr. Walsh's appeal.

THE PERSONNEL APPEALS BOARD


Patrick J. McNicholas, Chairman


Robert J. Johnson


Mark J. Bennett

cc: Virginia A. Vogel, Director of Personnel
Warden Michael Cunningham, N.H. State Prison
Lisa Currier, Human Resource Coordinator, Dept. of Corrections
Stephen J. McCormack, SEA Field Representative
Civil Bureau - Attorney General's Office